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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/647,000	08/22/2003	Norbert Linder	5367-40	1114
7590	11/29/2004			EXAMINER THAI, LUAN C
COHEN, PONTANI, LIEBERMAN & PAVANE Suite 1210 555 Fifth Avenue New York, NY 10176			ART UNIT 2829	PAPER NUMBER

DATE MAILED: 11/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/647,000	LINDER ET AL.	
	Examiner Luan Thai	Art Unit 2829	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 1,2,11 and 12 is/are rejected.
- 7) Claim(s) 3-10 and 13-20 is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 22 August 2003 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. ____ .   |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>8/22/03</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: ____ .                                   |

## **DETAILED ACTION**

### ***Claim Objections***

1. Claim 20 is objected to because of the following informalities:

In claim 20, the limitation of “the diffusion stop layer (16) is highly-doped” is repeated form, which is claimed, in base claim 19.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.  
(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-2 and 11-12 are rejected under 35 U.S.C. 102(e) as being anticipated by Kuo et al (6,608,328).

The figures and reference numbers referred to in this office action are used merely to indicate an example of a specific teaching and are not to be taken as limiting.

Regarding claims 1-2 and 11-12, Kuo et al (see specifically figures 3-4) disclose a radiation-emitting semiconductor component having a layer structure, comprising: an n-doped cladding layer (321), a p-doped cladding layer (324), an active layer (322) based

on InGaAlP arranged between the n-doped cladding layer (321) and the p-doped cladding layer (324), and a diffusion stop layer (323) arranged between the active layer (322) and the p-doped cladding layer (324), wherein the active layer comprises a multiple quantum well structure, and wherein the diffusion stop layer (323) is alternately tensile/compressively strained (Col. 9, lines 37+). Kuo et al. further disclose a transparent coupling-out layer (326), which preferably essentially consists of GaP, is arranged on the topmost cladding layer of the layer structure.

***Allowable Subject Matter***

4. Claims 3-10 and 13-20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
5. The following is a statement of reasons for the indication of allowable subject matter:

The prior art taken either singly or in combination fails to anticipate or fairly suggest: a) the superlattice of the diffusion stop layer having N periods of tensile-strained  $In_x(Ga_yAl_{1-y})_{1-x}P$  layers, where  $0 < x < 1$ ,  $0 < y < 1$ , and compressively strained  $In_x(Ga_yAl_{1-y})_{1-x}P$  layers, where  $0 < x < 1$ ,  $0 < y < 1$ , N lying between 2 and 40, preferably between 5 and 20, particularly preferably between 8 and 15, as recited in claim 3; b) the strain lies in the range of 0.1% to 5%, preferably in the range of 0.5% to 2%, particularly preferably in the range of 0.7% to 1%, as recited in claims 5 and 13; c) the p-doped cladding layer being p-doped with magnesium, as recited in claim 6; and d) the diffusion stop layer being highly n-doped, as recited in claim 7; especially when these limitations are considered within the specific combination claimed.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Luan Thai whose telephone number is 571-272-1935. The examiner can normally be reached on 6:45 AM - 4:15 PM, Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Tokar can be reached on 571-272-1812. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**Luan Thai**  
Primary Examiner  
Art Unit 2829  
November 19, 2004